



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/173746

PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 12, 2016, at Manitowoc, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's MA application for assets over the program limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. He was admitted to a skilled nursing facility in September, 2015.

2. On January 4, 2016, an MA application was submitted on behalf of the Petitioner requesting Institutional MA with a three month back-date request. It was reported that the Petitioner had assets that included a checking account with \$2,044.05, a savings account with \$2,000, an irrevocable burial trust, his home valued at \$45,000, and two life insurance policies with cash values totaling \$13,922.70. It was reported that he has social security income and pension income of \$1,467.35/month. Expenses from his cost of care at the skilled nursing facility were reported as \$290/day. Additional expenses reported were a hospital bill of \$1,000, real estate taxes of \$1,737.34/year, property/casualty insurance of \$831/year, utility expenses of \$150/month, a dental bill of \$1000, Medicare premium of \$104.90/month, a private health insurance premium of \$180/month.
3. On January 19, 2016 and January 25, 2016, the agency issued Notices of Proof Needed to the Petitioner at the nursing home requesting information regarding the Petitioner's burial trust, life insurance policies, bank accounts, and home. The due date for the information was January 29, 2016.
4. On February 1, 2016, the agency received a letter from the Petitioner's attorney indicating that the agency had incorrectly issued the verification requests to the Petitioner at the nursing home. The Petitioner's attorney requested an extension on the due date for the information.
5. On February 15, 2016, the Petitioner's attorney sent a copy of the signature page, burial trust agreement, statement showing the cash surrender values of the life insurance policies, checking and savings account statements, the warranty deed for the Petitioner's home, tax assessment information for the home and an appraisal of the home.
6. On February 22, 2016, the agency issued a Notice of Proof Needed to the Petitioner's attorney requesting the following information: verification of bank accounts and information regarding the Petitioner's home and his intent to return to the home. The notice also stated as follows: Bank statements are needed for the months of (September – current day). We also need a listing contract for the home as this is an available asset to him, if he is not intending to return.” The due date for the information was March 2, 2016.
7. On February 29, 2016, the agency received a copy of the Petitioner's deed to his home, the property assessment information from Manitowoc County, and an appraisal of the property reporting a value of \$48,500.
8. On March 3, 2016, the agency issued a Notice of Proof Needed to the Petitioner's attorney requesting information regarding the Petitioner's home and his intent to return to his home. The notice stated as follows: “Does [Petitioner] intent (sic) to return home? Is the property listed for sale? Still need bank statements for the months of September, October and November.” The due date for the information was March 14, 2016.
9. On March 7, 2016, the Petitioner's attorney sent bank statements for September, October and November and the warranty deed, tax assessment information and appraisal for the Petitioner's home. The letter also stated: “We will be listing the property for sale as we do not anticipate him returning to the residence.”
10. On March 15, 2016, the agency issued a Notice of Decision to the Petitioner's attorney informing him that the Petitioner's application was denied effective December 1, 2015 due to assets over the program limit.
11. On April 19, 2016, an appeal was filed with the Division of Hearings and Appeals on behalf of the Petitioner.
12. On May 9, 2016, the agency received a copy of the MLS listing for the Petitioner's home. The home was listed for \$48,900. On May 11, 2016, the Petitioner's attorney sent a copy of the Residential Listing Contract for the Petitioner's home to the agency.

DISCUSSION

A person cannot receive medical assistance if her available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). Eligibility begins “on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.” Wis. Admin. Code § DHS 103.08(1).

In processing an MA application, the agency is required to verify an applicant’s assets. Medicaid Eligibility Handbook, § 20.3.1. It is the responsibility of the applicant to provide the required verification. MEH, § 20.5. When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. MEH, § 2.8.2. An applicant’s countable, available assets may include:

1. Joint accounts
2. Burial assets
3. Savings account
4. Checking account
5. Cash available
6. Stocks, bonds, CDs.
7. Loans
8. Life insurance
9. Non-burial trusts
10. Land contract
11. Mortgage
12. Trailer home
13. Non-home real property
14. Some vehicles

MEH, §16.1.

With regard to real property, MEH § 16.8.1.3 states a home property is exempt for an institutionalized person if one of the following conditions is met:

1. His or her spouse or dependent relative resides in the home. . .
2. The institutionalized person expresses his or her intent to return to the home. If he or she is able to form an intent but unable to express it, determine his or her intent through other available evidence. Other evidence includes:
 - a. His or her written statements.
 - b. His or her oral statements made before incapacitation. Accept reports of these statements made by family members.
 - c. Accept reports of his or her intent made by an authorized representative . If there is no evidence he or she disagrees with the statement, accept the authorized representative's statement.

If he or she appears unable to form an intent but has not been judged incompetent by a court, accept a family member's statement as evidence of his or her intent.

If he or she has been judged incompetent, accept the intent statement of his or her guardian. Use the guardian's intent statement even if it differs from the member's.

If neither condition #1 nor #2 is met, the property is no longer the principal residence and becomes non-home property.

If an applicant's home is not exempt under one of the conditions stated in § 16.8.1.3, the agency must determine if the property is an available assets. Section § 16.2.2 states as follows:

Non-exempt real property is unavailable when:

1.The person who owns the property lists it for sale with a realtor (see Section 16.9 Non-home Property Exclusions).

If an institutionalized person owns property that is unavailable because it is listed for sale, he or she can use some of his or her income to maintain the property until it is sold. Allow minimal heat and electricity costs so as to avoid physical damage to the property while it is waiting to be sold. Also allow a minimum amount of property insurance coverage. Do not allow taxes and mortgage payments; they must be paid from the proceeds of the sale.

Allow these minimal maintenance costs for as long as the person is making a good faith effort to sell the property at current market value.

2.A joint owner who is outside the fiscal test group refuses to sell the property.

In this case, there was no evidence that a spouse or relative dependent of the Petitioner was living in the home. There was also no evidence presented that the Petitioner had an intent to return home when he filed his application in January. The agency requested information regarding the Petitioner's intent in February and March. In March, there was an express statement that the Petitioner did not intend to return home. Therefore, the agency determined the home was not an exempt asset. The agency also asked in February and March whether the home was listed for sale and specifically requested a copy of any listing contract. No verification of the home being for sale was provided by the Petitioner or his representatives. Therefore, in accordance with § 16.8.1.3, the agency determined the Petitioner's home was an available asset and he was over the \$2,000 asset limit. The Petitioner's home was not listed for sale until May, 2016. Therefore, I conclude that the evidence demonstrates that the agency made the proper determination that the Petitioner was over the asset limit when he applied for MA in January, 2016.

The agency also noted that even if the Petitioner's home could have been considered an exempt or non-countable asset, the Petitioner was still over the \$2,000 asset limit in January, 2016.

Based on the evidence presented and the MA rules and regulations, I conclude the agency properly denied the Petitioner's January 4, 2016 MA application for being over the asset limit.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's January 4, 2016 MA application for being over the asset limit.

THEREFORE, it is

ORDERED

That the Petitioner's appeal be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

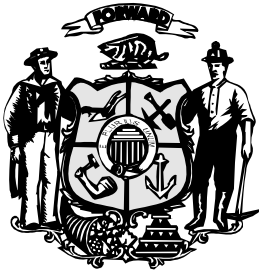
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of June, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 30, 2016.

Manitowoc County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]